

EXHIBIT 5

UNITED STATES DISTRICT COURT OF THE EASTERN
DISTRICT OF PENNSYLVANIA

TRISHA TSHUDY
762 Palmyra Bellegrove Road
Annville, PA 17003

Plaintiff,

PENNSYLVANIA STATE UNIVERSITY
1600 Woodland Road
Abington, PA 19001,

Defendant.

AUDIO TRANSCRIPTION

LENGTH OF AUDIO FILE: 4:32:14

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1 Proceedings
 2 MS. TSHUDY: This is not being
 3 recorded --
 4 DEAN WILLIAMS: It will be
 5 recorded.
 6 MS. TSHUDY: It will be, okay.
 7 DEAN WILLIAMS: Yes, it will be
 8 recorded.
 9 MS. TSHUDY: Okay.
 10 DEAN WILLIAMS: We are required
 11 under the honor code to electronically
 12 preserve the record.
 13 I will tell you while it's just
 14 us, you will not want to do your
 15 deliberation in this room. Because of
 16 that, I have reserved Room 124, the
 17 videoconference room over there, all
 18 afternoon so you all have that
 19 conference room at your disposal. So
 20 when you are ready to deliberate, please
 21 leave this room, go there and then come
 22 back.
 23 PROFESSOR GOULD: Yes, that will
 24 be offered.
 25 MS. TSHUDY: Our deliberations

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1 Proceedings
 2 don't have to be recorded, right?
 3 DEAN WILLIAMS: Your deliberation
 4 should not be recorded, which is why --
 5 MS. TSHUDY: Because, I remember
 6 last time we did it, just in case.
 7 DEAN WILLIAMS: Yes, and then they
 8 were erased.
 9 MS. TSHUDY: Okay.
 10 DEAN WILLIAMS: So that they were
 11 not part of the permanent record. So
 12 your deliberation should not be
 13 recorded. They should be your -- you
 14 should feel free to do that as -- openly
 15 as -- so you don't feel like you're
 16 being watched.
 17 What's your preference,
 18 Professor Butler, on the timing here?
 19 PROFESSOR BUTLER: Give her five
 20 minutes, academic hour.
 21 DEAN WILLIAMS: Okay.
 22 PROFESSOR BUTLER: If not, we'll
 23 start.
 24 PROFESSOR GOULD: Okay. So it
 25 continues if she's not here?

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1 Proceedings
 2 DEAN WILLIAMS: I believe,
 3 Professor Butler, that's your call. But
 4 that would be my recommendation.
 5 PROFESSOR BUTLER: That's my call.
 6 MS. TSHUDY: I have a random
 7 question.
 8 DEAN WILLIAMS: Yes, ma'am.
 9 MS. TSHUDY: Where is Z? Like,
 10 where is Z [REDACTED] (phonetic)?
 11 DEAN WILLIAMS: I'm sorry, what?
 12 MS. TSHUDY: Z [REDACTED] V [REDACTED], the other
 13 Honor Board member.
 14 DEAN WILLIAMS: So the way the
 15 Honor Board is constructed for each
 16 hearing, the Honor Committee is all of
 17 you, the six students. One of you is
 18 the chair. And then the chair gets to
 19 appoint members of the committee to the
 20 hearing board. In this case, [REDACTED]
 21 appointed Professor Butler, and asked
 22 him to be president of the hearing
 23 board, appointed Professor Riesmeyer,
 24 and then appointed the three of you as
 25 the students, as required under the

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1 Proceedings
 2 hearing board.
 3 MS. TSHUDY: Okay. So there are
 4 always going to be more of us than there
 5 will be --
 6 DEAN WILLIAMS: Yes.
 7 MS. TSHUDY: -- that are here.
 8 DEAN WILLIAMS: That's the way the
 9 honor code is constructed. The hearing
 10 board is always pulled from the Honor
 11 Committee, made up of two faculty
 12 members and three students. And if you
 13 give me a second -- that is Section five
 14 point -- I put the honor code in your
 15 packet so that you would have it. So in
 16 5.3B on page 10, The hearing board shall
 17 consist of five Honor Committee members,
 18 three student members, and two faculty
 19 members appointed by the chair. The
 20 honor code administrator, me, and the
 21 chair, [REDACTED], shall not serve on a
 22 hearing board. So those are the
 23 requirements and limitations for the
 24 hearing board.
 25 [REDACTED]: (Inaudible) That they

2 (Pages 2 to 5)

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1 Proceedings
2 had to be here before 1:00?
3 DEAN WILLIAMS: The note that I
4 sent to everyone that said, please be
5 here at 12:45, she was copied on.
6 [REDACTED]: If something came up,
7 would she have emailed you?
8 DEAN WILLIAMS: I can look. My
9 guess is she may have been with
10 Professor Butler since she has been
11 communicating with him. I have nothing
12 in my email.
13 UNKNOWN SPEAKER: (Inaudible) I
14 was waiting outside.
15 DEAN WILLIAMS: Oh, no. I'm
16 sorry. We've been waiting for you.
17 UNKNOWN SPEAKER: I wasn't sure,
18 so --
19 DEAN WILLIAMS: Have a seat right
20 there.
21 UNKNOWN SPEAKER: It says
22 restricted access, so I didn't know.
23 DEAN WILLIAMS: We normally come
24 in this door.
25 UNKNOWN SPEAKER: Oh, okay. That

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1 Proceedings
2 makes sense.
3 PROFESSOR BUTLER: Is your witness
4 in the --
5 MS. TSHUDY: Yeah, he's using the
6 restroom.
7 DEAN WILLIAMS: Okay.
8 (Crosstalk.)
9 DEAN WILLIAMS: Yeah, he can come
10 in this door and then just sit back here
11 right behind you.
12 MS. TSHUDY: Okay.
13 PROFESSOR BUTLER: Just give him a
14 minute.
15 DEAN WILLIAMS: Yes, absolutely.
16 Did you find it?
17 [REDACTED]: Oh, yeah, I found the
18 knob. I just twisted for days and days.
19 This is definitely better.
20 DEAN WILLIAMS: I love these
21 chairs, infinitely adjustable.
22 Is it warm in here or is it me?
23 Seth, is there a way to adjust
24 this?
25 MS. TSHUDY: No, I just read it.

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1 Proceedings
2 PROFESSOR GOULD: To your laptop.
3 MS. TSHUDY: Okay. Thank you.
4 DEAN WILLIAMS: If you don't mind,
5 go ahead and put the projector on.
6 PROFESSOR RIESMEYER: Let me just
7 pull this down. Apparently Tom did say
8 we're allowed to open a window a little
9 bit if need be.
10 DEAN WILLIAMS: Oh, that would be
11 really great.
12 Do you want to just sit right
13 here?
14 PROFESSOR BUTLER: Then we'll
15 begin.
16 MS. TSHUDY: Thank you.
17 PROFESSOR BUTLER: So good
18 afternoon, members of the Honor board,
19 Trisha and Dean Williams. We're here
20 this afternoon to conduct an honor code
21 hearing to consider an allegation of
22 violation of academic integrity under
23 the Dickinson Law honor code.
24 I'm Professor William Butler. I'm
25 a member of the Dickinson Law faculty.

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1 Proceedings
2 I am a member of the honor code
3 committee. I have been designated by
4 the chairman of that committee to act as
5 president of this hearing board. I am
6 joined by Professor Megan Riesmeyer, on
7 my right; by 2L student, [REDACTED], my
8 left; and by 1L students, [REDACTED],
9 and [REDACTED], on my far right.
10 Professor James Gould has filed a
11 report of suspected violation of the
12 Dickinson Law honor code with Dean
13 Williams. And in her role as
14 administrator of the honor code, and in
15 accordance with the honor code, the
16 purpose of this proceeding is to
17 determine whether Ms. Tshudy has
18 committed violations of the honor code,
19 and if we make such determination to
20 determine the appropriate sanctions.
21 The honor code requires that I
22 arrange for testimony to be
23 electronically preserved, and therefore,
24 this meeting is recorded. But the
25 deliberations of this body will not be

3 (Pages 6 to 9)

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1 Proceedings
2 recorded. The conduct of the hearing is
3 defined in Section 5.5 of the honor
4 code, and I think everybody has seen a
5 copy of that.

6 Dean Williams will first question
7 Professor Gould, then Ms. Tshudy may
8 question him. Dean Williams will then
9 follow up with any additional questions
10 that she may have, and any member of
11 this board may ask questions when they
12 wish. Ms. Tshudy may also present her
13 testimony and she may be questioned,
14 although she is not obligated to do so
15 under Article Section 3.2D of the honor
16 code.

17 It's my responsibility to rule on
18 any procedural matters that come up. I
19 will also rule on the admissibility of
20 evidence based on relevance and
21 fairness. We are not bound by the
22 formal rules of evidence.

23 This board may draw adverse
24 inferences in accordance with Section
25 5.6 of the honor code. So, hey, we may

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1 Proceedings
2 draw an adverse inference against an
3 accused student who, upon request, fails
4 or refuses to produce relevant real
5 evidence in her possession or control.
6 And the board may draw an adverse
7 inference against the accused student
8 for remaining silent during the stage
9 only in determining the appropriate
10 sanctions after finding a violation.

11 After all the testimony is
12 presented, the hearing board will
13 convene on its own, and we will leave
14 this room, to determine whether a
15 violation has occurred. The presenter
16 must prove the facts of the case by
17 clear and convincing evidence. This is
18 not a "beyond the reasonable doubt"
19 standard.

20 So in order to find the student
21 guilty of an honor code violation, four
22 members of this board must be persuaded
23 that, first, the presenter proved the
24 alleged facts and, second, the conduct
25 proved by the presenter violates the

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1 Proceedings
2 honor code.

3 If this board finds that a
4 violation occurred, the board may then
5 impose sanctions and four of the five
6 members of the meeting board must
7 approve the sanctions that are imposed.
8 If the hearing board imposes a sanction
9 of suspension or expulsion from the law
10 school, all members of the hearing board
11 must agree. The range of possible
12 sanctions is set out in chapter 6 of the
13 code.

14 So at this point, I turn the floor
15 over to Dean Williams to get us figured.

16 DEAN WILLIAMS: Thank you,
17 Professor Butler.

18 I think you all know me, but for
19 purposes of the record, I'm Dickinson
20 Law Associate Dean Laura Williams. I am
21 here today in my role as honor code
22 administrator.

23 We're here this afternoon to
24 consider a case of purported plagiarism.
25 In my role as honor code administrator,

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1 Proceedings
2 I received a report of alleged
3 violations of academic integrity filed
4 by Professor James Gould.
5 Professor Gould reported that he
6 suspected that the final paper turned in
7 by Ms. Tshudy in the Biotech
8 Pharmaceuticals and the law course in
9 the fall of 2021, may not have been her
10 own work -- entirely her own work.
11 The substance of the allegation is
12 that Ms. Tshudy submitted a final paper
13 that was substantially similar to a
14 published law review note authored by
15 Hannah-Alise Rogers without
16 acknowledgment of Ms. Rogers' work.
17 That note was published in 2014 in the
18 Journal of Intellectual Property Law and
19 is called Trade Secrets Rising:
20 Protecting Equivalency Test Research and
21 Development Investments after Momenta
22 versus Amphastar. This law review note
23 is available via Digital Commons. You
24 all have received copies of these
25 documents.

4 (Pages 10 to 13)

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1 Proceedings

2 A few procedural matters. So I
3 wanted to take a minute to review the
4 procedural matters to date. I've
5 included a copy of the honor code in
6 your packet if you want to follow along.
7 Under the honor code, Professor Gould
8 sent me the information about the
9 alleged violation on Friday,
10 December 31, 2021. And under
11 Section 5.1 on page 10 of the honor
12 code, any person affiliated with the law
13 school may submit a report of suspected
14 violations.

15 Professor Gould sent me
16 Professor -- Ms. Tshudy's paper and he
17 sent me a version with some yellow
18 highlighting where he quickly identified
19 things he believed were the same between
20 Ms. Tshudy's paper and Ms. Roger's law
21 review note.

22 As part of my initial
23 investigation in my role as honor code
24 administrator, I ran those papers
25 through an online plagiarism checker.

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1 Proceedings

2 And then I used the version of
3 Ms. Tshudy's paper already highlighted
4 by Professor Gould, and I further
5 highlighted her paper and the law review
6 note with pink highlighter where I saw
7 substantial similarities between the
8 papers, and you've all seen my
9 pink-highlighted version.

10 As required under Section 5.2A,
11 also on page 10, I had a phone call with
12 Ms. Tshudy on Monday, January 3, and the
13 purpose of that call was to let
14 Ms. Tshudy know that the allegation had
15 been lodged. Professor Sabrina Sondhi,
16 also a member of the Honor Committee,
17 joined me for that call.

18 On Tuesday, January 4, Ms. Tshudy
19 provided me with further information
20 about her paper for Professor Gould's
21 class. She included a list of sources
22 and an outline for her paper with newly
23 added annotations. Those materials were
24 forwarded to the hearing board. I
25 responded to Ms. Tshudy's email on

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1 Proceedings

2 January 4 with further information
3 regarding my investigation into the
4 allegations, including the
5 pink-highlighted versions of the two
6 papers. In my email to Ms. Tshudy, I
7 outlined for her the procedure for honor
8 proceedings as provided in Chapter 5 of
9 the honor code.

10 Professor Sondhi and I had a
11 further conversation with Ms. Tshudy on
12 Wednesday, January 5th. Ms. Tshudy
13 reiterated that she did not believe she
14 violated the honor code because she did
15 not intend to copy someone else's work,
16 and therefore, she did not feel she
17 should enter into an agreement to
18 resolve the allegations.

19 Under Section 5.2, still on
20 page 10, if -- in the absence of an
21 agreement, the honor code administrator
22 is obligated to meet with the honor
23 committee chair to determine whether
24 there is probable cause to believe that
25 the honor code has been violated. I

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1 Proceedings

2 consulted with honor committee chair
3 [REDACTED] on Thursday, January 6, and
4 we concluded that probable cause exists
5 to believe the honor code has been
6 violated.

7 Therefore, under Section 5.3A of
8 the honor code, honor committee chair
9 [REDACTED] appointed members of the
10 hearing board, appointed
11 Professor Butler as president, scheduled
12 the time and place of hearing, notified
13 Ms. Tshudy, and gave notice to
14 Professor Gould as a witness.

15 Under Section 3.1A of the honor
16 code, which is on page 8 -- if you want
17 to turn to that. I provided all of the
18 evidence I expect to present today to
19 Ms. Tshudy. I recently became aware of
20 a university provided program for
21 detecting plagiarism called "Turnitin."
22 I did not know about Turnitin. I used
23 Turnitin to compare Ms. Tshudy's paper
24 and Ms. Roger's note. While the
25 substance of the highlighting is the

5 (Pages 14 to 17)

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1 Proceedings
2 same as the pink-highlighted version, I
3 had said previously, these are a little
4 easier to read, and therefore it is
5 these versions I have included in your
6 package.
7 Before we move on, does anyone
8 have questions of me?
9 PROFESSOR BUTLER: I see no
10 questions -- yes, please.
11 UNKNOWN SPEAKER: Sorry, I just
12 want to reiterate, there was an attempt
13 to make an agreement beforehand.
14 DEAN WILLIAMS: Yes, correct.
15 Okay. The sections of the honor
16 code alleged to have been violated can
17 be found on page 6 of the honor code.
18 So if you want to turn to page 6,
19 page -- Section 2.1 is the violations
20 section. So the sections alleged to be
21 violated are Section 2.1D, violating any
22 other rules of Dickinson Law or a member
23 of its faculty pertaining to the
24 administration of examinations or the
25 completion of coursework. And

1 Proceedings
2 Section 2.1F, Violations of Academic
3 Integrity.
4 Violations of academic integrity
5 include, but are not limited to copying,
6 plagiarism, fabrication of information
7 or citations, facilitation of acts of
8 academic dishonesty by others,
9 unauthorized possession of examinations,
10 submitting work of another person or
11 work previously used without informing
12 the instructions -- instructor, excuse
13 me. And tampering with the academic
14 work of other students.
15 For purposes of this hearing, the
16 important parts of Section 2.1F are
17 copying and plagiarism. So let's turn
18 to the definition of plagiarism under
19 Section 1.112 of the honor code, which
20 is found on page 4. We're going to
21 parse this definition of plagiarism
22 because it's pretty dense.
23 Under Section 1.112 of the honor
24 code, the definition of plagiarism is --
25 says that plagiarism should be given its

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1 Proceedings
2 usual dictionary meanings, to steal and
3 pass off the ideas or words of another
4 as one's own, to use a created
5 production without crediting the source,
6 or to commit literary theft presenting
7 as new and original an idea or product
8 derived from an existing source.
9 Plagiarism includes the copying or
10 paraphrasing without acknowledgment of
11 any material written or expressed by
12 another person and the submission of
13 work written in whole or in substantial
14 part by someone other than the student
15 who submits the work as the student's
16 own work.
17 The definition goes on to include
18 the following: Plagiarism also includes
19 the resubmission of work originally
20 completed for another counsel and the
21 giving or receiving of excessive
22 assistance or making excessive use of
23 the work of someone else in preparing an
24 assignment without faculty approval.
25 What constitutes "excessive

1 Proceedings
2 assistance" or "making excessive use of
3 the work of someone else" is a matter
4 for the course professor to decide and
5 communicate in a timely manner to the
6 students. Unless the course professor
7 gives different instructions, excessive
8 assistance should be construed with
9 reference to the academic purpose of the
10 assignment to develop a student's
11 research and writing skills and to
12 evaluate his or her skills.
13 A student may receive some counsel
14 and suggestions from other people, for
15 example, another student, the course
16 professor, so long as the paper is in
17 both pedagogical and literary senses the
18 work of the student.
19 So at this point I'd like to call
20 Professor Gould as a witness. So,
21 Professor Gould, will you join me?
22 Professor Gould, would you please
23 take a moment to introduce yourself.
24 PROFESSOR GOULD: Sure. I'm a
25 patent attorney and counsel at the

6 (Pages 18 to 21)

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1 Professor Gould -Direct Examination
 2 RatnerPrestia Law Firm where I'm
 3 co-chair of the firm's Pharmaceutical,
 4 Biopharma and Life Sciences Industry
 5 Group. I've been a patent attorney for
 6 over 30 years, specializing mainly in
 7 pharmaceuticals and biotech.
 8 Previously, I was, for a long time, in
 9 house at Merck and Schering-Plough, most
 10 recently as a legal director in Merck's
 11 Intellectual Property Department. I'm
 12 also an adjunct professor here, as you
 13 know, last term teaching biotech,
 14 pharmaceuticals and the law. Of course,
 15 I also taught two years before that.

16 EXAMINATION BY
 17 BY DEAN WILLIAMS:

18 Q So, Professor Gould, I'm going to
 19 put your course instructions on the screen.

20 Did you provide information to
 21 your students about the requirements for
 22 their final paper in your course?

23 A Yes. And a good example of that
 24 is the course policy statement. This is a
 25 true and correct copy. It's been posted for

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1 Professor Gould -Direct Examination
 2 the class in Canvas since early October and
 3 has not been revised since. This has
 4 detailed instructions on the final paper.

5 Q And I've sent this material to all
 6 of you. You should all have this. So will
 7 you just read the details regarding the
 8 instructions for the final paper?

9 A Right. Well, the first one is --
 10 well, I call it BPL, initials of the course,
 11 Biotech, Pharmaceuticals and the Law. So
 12 BPL final papers must comply with the
 13 following submission and formatting
 14 requirements, unless permission to deviate
 15 is obtained well ahead of time. A minimum
 16 of 20 double-spaced tight pages, excluding
 17 footnotes, end notes, references using
 18 one-inch margins and 12-point font, and
 19 approximately 5,000 words minimum, again,
 20 excluding footnotes, end notes and
 21 references.

22 (2), citations shall conform to
 23 the Blue Book.

24 (3), students must submit an
 25 original manuscript.

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1 Professor Gould -Direct Examination
 2 And (4), students shall not engage
 3 in plagiarism or other dishonesty or
 4 deception. Students guilty of such conduct
 5 will receive a failing grade, will be denied
 6 credit for the course, and will be subject
 7 to other sanctions pursuant to the Dickinson
 8 Law honor code.

9 And then, that's just to be
 10 completed, there's more detail and more
 11 instructions.

12 (5), students shall not receive
 13 excessive assistance or make excessive use
 14 of the work of someone else preparing a BPL
 15 final paper, regardless of whether they give
 16 credit to that person.

17 (6), the absolute deadline for
 18 submission of BPL final papers is December
 19 15, 2021. The due date for submission of
 20 the proposed topics for the final paper is
 21 October 6 -- and I give liberal extensions
 22 on the choice of topic, just so you know.
 23 And the due date for submission of students
 24 research plan for the final paper is
 25 October 18th.

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1 Professor Gould -Direct Examination

2 There's more detail. A sample
 3 student paper provided by another
 4 Dickinson's Law professor conforming to
 5 rules above, I posted in Canvas. A research
 6 plan for your paper, around 400, 500 words
 7 or so, is due Monday, October 18th. Your
 8 plan should include a clear statement of the
 9 issues that you will be handling, as well as
 10 your general research plan, your proposal
 11 for analyzing issues in your thesis.

12 You will present your paper at one
 13 of the last two class sessions -- and I
 14 detail on that if you need. The absolute
 15 deadline for your final paper will be
 16 December 15, 2021, and your final paper must
 17 be sent directly to me by email, my email,
 18 by 11:59 p.m. on that date.

19 Q So when Ms. Tshudy turned in her
 20 paper, what led you to suspect that her
 21 paper may not have been entirely her own
 22 work?

23 A I found the note in Law Review
 24 that you referred to earlier by Hannah-Alise
 25 Rogers very quickly on the Internet. And it

7 (Pages 22 to 25)

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1 Professor Gould -Direct Examination
2 was when I opened it up and started reading
3 the note and going through it, I recognized
4 substantial similarity to large parts of
5 Ms. Tshudy's paper.

6 Q And again, how did you find that
7 published Law Review note?

8 A Right. Well, the short answer is
9 a quick Google search. I should elaborate.

10 Q Yes, if you would.

11 A Ms. Tshudy's final paper focused
12 on a 2012 case Momena, and you actually
13 mentioned the case in the title of
14 Ms. Roger's note. And Ms. Tshudy's paper
15 focused on that case, which was a patent
16 case, to advocate a strategy of relying on
17 trade secret protection rather than patent
18 protection for testing methods, testing the
19 (inaudible) that will be submitted to the
20 FDA.

21 In what I've read in discussions,
22 in Scholarship, I couldn't recall that
23 strategy based on the Momena case, and I
24 was also curious because I was concerned
25 about what would happen if you preserve this

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1 Professor Gould -Direct Examination
2 trade secret instead of patenting it. What
3 would happen if FDA wanted to use that
4 testing method and disclose it, and then
5 that would ruin the trade secret.

6 So I was looking into -- not
7 recalling that, I literally opened a Google
8 search, to be specific. And I remember --
9 because this was very recently -- I put in
10 just three words. I put in "Momena trade
11 secret." And the very first hit was
12 Ms. Rogers' note in the Georgia Law Review.
13 So I clicked on it, I recognized -- the
14 title itself was right on point. I'll show
15 you.

16 Q Should I -- what would you like me
17 to open?

18 A Oh, I guess we could do that. One
19 thing is sort of just to go back and forth,
20 I guess. I guess, start with the --
21 Ms. Roger's note in the Law Review and go to
22 the first page.

23 I mean, literally, this is sort of
24 what happened and how I saw it. So I saw
25 the title, which was right on point, you

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1 Professor Gould -Direct Examination
2 know, focused on Momena case and protecting
3 equivalency testing. I should mention, the
4 Momena case was all about bioequivalency
5 testing for submission to FDA and patent
6 protection, nothing about trade secrets --
7 and then you go down the first page.

8 So I started reading it -- and you
9 can stop there. I started reading it and
10 the first couple of sentences looked really
11 familiar. And at this point, I pulled up
12 Ms. Tshudy's paper and -- yeah, so go to
13 that.

14 This should fall -- literally how
15 it went. And I saw, as you can see, there's
16 a lot word-for-word or very closely
17 paraphrased. And then I started going
18 through the note in Law Review alongside
19 with Ms. Tshudy's paper and started seeing a
20 lot of similarities in a couple of ways.

21 Maybe -- if you could scroll
22 through Ms. Tshudy's paper.

23 So I'm looking at the two
24 side-by-side. So if you scroll through
25 especially I saw those sentences. And then

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1 Professor Gould -Direct Examination
2 for a while, nothing I recognized in the
3 note because a lot of this was the patent
4 section. And then I started seeing certain
5 keywords, but it -- go down a little more to
6 see -- do it more expeditiously. A lot of
7 this starts at around pages 7, 8, 9.

8 Q And, I'm sorry, this doesn't
9 have -- this is page 9, right?

10 A This was submitted without page
11 numbers.

12 Q Yeah, without page numbers. So
13 this is page 9.

14 A Sorry. Do you have to add two?

15 Q Because of the -- yeah, maybe I
16 do.

17 A Yeah, you have to add two.

18 Q Okay. So -- I'm sorry. Can you
19 just give me a --

20 A Oh, sure.

21 Q Tell me where you want me to go.

22 A Well, that's where a lot of the --
23 there are a couple of things that stood out
24 to me. One, as I went through them, I was
25 seeing a lot that looked really similar and

8 (Pages 26 to 29)

1 Professor Gould -Direct Examination
2 just go through it. And again, as you know,
3 what you're looking at is the Turnitin
4 program that did this highlighting. But I
5 could see a lot of this -- and scroll down
6 some more.

7 At first when it gives you an
8 overview, especially when you get to the
9 analysis and cases section. Yeah, so I also
10 started seeing a lot of the same cases, what
11 looked like the same basic order, largely, a
12 lot of similar quotations. So if you --
13 scrolling down. I just want to give you a
14 general idea of how I was going through and
15 seeing a lot of similarity just in the bulk
16 and a lot of copying. And, again, this was
17 highlighted by the program later, but I saw
18 a lot of those.

19 And then another thing I did, I
20 started seeing certain unusual words or
21 wording when I was reading the note in Law
22 Review. And I think -- you want me to go
23 through some examples of that?

24 Q Yeah, I think that would probably
25 be helpful.

1 Professor Gould -Direct Examination
2 similarities in the structure of
3 Ms. Tshudy's paper compared to the structure
4 of Ms. Rogers' Law Review note.

5 A Okay. On the structure
6 Ms. Tshudy's paper broadly, sort of, had two
7 parts. It had, sort of, the patent part,
8 questioning the value of patents, and really
9 that was focused on the Momena case where
10 the Federal Circuit found in that case, in
11 the 2012 Momena case, a Safe Harbor
12 exemption, if you will, for infringement of
13 a patent that related for testing. Testing
14 methods that will be submitted to the FDA.

15 And I think it's fair to say both
16 the note and Ms. Tshudy's paper put a lot of
17 emphasis on the Momena case to start
18 building and advocating the strategy of
19 relying maybe more on trade secret
20 protection than patent protection. And
21 then, just structurally, the next part of
22 Ms. Tshudy's paper, which is more than half,
23 but, sort of, the second half of the second
24 part, was then analyzing under the strategy,
25 assessing potential risks.

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2 A But there were certain key phrases
3 and wording as I was reading the note in the
4 Law Review, it was like, oh my gosh, I've
5 seen this before. And so it wasn't just the
6 sort of look of what seems to be substantial
7 copying and bulk, if you will. But then I
8 started seeing certain key phrases and words
9 that I recognized and compared it, and was
10 finding passages with quite a lot with
11 word-for-word copying and some passages
12 where it was mostly word-for-word, but then
13 there were some slight changes, so it was
14 closely paraphrased the rest of it.

15 So there are a lot of examples of
16 that where it's mostly word to
17 word-for-word, and then maybe parts of it
18 will be closely paraphrased with changing
19 some of the words. So I started seeing
20 that.

21 And then let me pause here. Do
22 you want me to say what I did next?

23 Q No. Actually, I'd like you to
24 talk a little bit about the structure of
25 Ms. Tshudy's paper and whether you noticed

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2 And if I remember correctly, the
3 risk she was looking at was first the risk
4 of Freedom of Information Act, or FOIA,
5 requests that could result in possibly in
6 revealing the trade secret. Ms. Tshudy
7 briefly touched on, very briefly, I think,
8 the possibility of FDA use and FDA's
9 disclosure of the testing method supposed to
10 be kept a trade secret. Then, if I remember
11 correctly, sort of, litigation risks under
12 the right of public access, you know,
13 especially in court judicial documents.

14 And then Ms. Tshudy's paper, the
15 last part of that, sort of, risk analysis
16 was subpoenas. And if I recall correctly,
17 that largely tracked the -- Ms. Rogers note
18 in the Georgia Law Review. And my
19 recollection is roughly in the same order.
20 That's the structure.

21 And then at some point you may
22 want me to go through specific examples,
23 words and phrasing.

24 Q Yeah, why don't we do that.

25 A And then I could talk at some

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1 Professor Gould -Direct Examination
2 point about the overall thesis of each
3 paper.

4 Q Go ahead. Tell me where you would
5 like me to go.

6 A Right. We did page one first.
7 There's a lot we can go through, but I'm
8 going to give quite a number of examples.
9 And I guess anyone can ask if they want more
10 examples, but --

11 Just to focus on some examples,
12 this is where I'm seeing, sort of, unusual
13 or special words and phrases, you know, that
14 I recognized back and forth. So here on
15 page 4, may have to add -- she's going by
16 that -- it may be page 6. Here's one, right
17 there, near the bottom where it says to
18 read -- not the very bottom, just above
19 that, where it says, Safe Harbor Provision
20 of the Hatch-Waxman Act. So Safe Harbor,
21 the provision of the Hatch-Waxman Act.
22 Again, the program Turnitin program. I
23 think my understanding is it strictly does
24 word-for-word.

25 Q Yeah, I mean, it looks for --

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1 Professor Gould -Direct Examination

2 A Right. It doesn't start
3 highlighting close paraphrasing.

4 Q Close paraphrasing, no.

5 A So Safe Harbor Provision of the
6 Hatch-Waxman Act allows competing drug
7 manufacturers. I recognized the word borrow
8 in quotes, and it's in quotes also in
9 Ms. Rogers note in Law Review. She, I'm
10 sure, meant it not as a quotation of the
11 case, but as sort of a colloquial phrase.

12 Q If you just give me a second.

13 A Sure.

14 Q It should be on this page.

15 A Yeah, you had it. Sorry. You're
16 going to the note now?

17 Q Yeah, this is the note right here.
18 The Safe Harbor Hatch-Waxman Act allows
19 competing drug management -- this is the
20 note. This is the Law Review note.

21 A Right. The published note.

22 Q This is the published Law Review
23 note.

24 A And there you'll see reference to
25 borrow, also in quotes.

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1 Professor Gould -Direct Examination

2 Q There it is in the Law Review
3 note.

4 A And then I'm just going to go to
5 the next highlighted sentence after that.
6 I'm going to try and do this in page order.
7 So let's see -- and go down to the next
8 highlight. There we go.

9 Federal circuits, holding, and
10 Momenta threatens manufacturers -- on Ms.
11 Tshudy's paper, it says, of generics --
12 well, you'll see in a second what Ms. Tshudy
13 substituted for the (inaudible) note. But I
14 recognized, a devastating loss of previously
15 available patent protection for -- and
16 again, some change in the wording.

17 And here is an example,
18 devastating loss, I found pretty readily --
19 I have to find it here. Yeah, there's
20 Federal circuits holding, and Momenta
21 threatens manufacturers with a devastating
22 loss of previously available patent
23 protection.

24 And some of these I just saw and
25 recognized. I also did some control F finds

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1 Professor Gould -Direct Examination

2 and found some things that way. But again,
3 as you mentioned, one reason I also looked
4 for very precise and unusual or special
5 wording as sort of a fingerprint, because
6 the Turnitin program will show extensive
7 copying of summaries of the cases and
8 quotes -- quotations.

9 But I wanted to also show that a
10 lot of this was not just summarizing cases
11 or quoting, but this was sort of what I
12 would call "analytical passages" and special
13 words.

14 Okay. And let's see another one.
15 Let's go to page 7, which I guess might come
16 up as 9. This is something I saw early on,
17 just so you're following -- another thing
18 that really got my attention, besides the
19 first two sentences, this is a phrase,
20 "hungry eyes." Manufacture -- well,
21 fortunately a solution exists for generic
22 drug manufacturers who wish to shield their
23 tests and methods from the hungry eyes of
24 their competitors.

25 And then the rest. Despite

10 (Pages 34 to 37)

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1 Professor Gould -Direct Examination
 2 numerous regulations governing disclosure of
 3 information submitted, the FDA, including
 4 most notably the Freedom of Information Act,
 5 generic drug manufacturers using a
 6 heightened degree of care can protect -- and
 7 then I think -- well, we'll see in a second.
 8 I think there's some paraphrasing here that,
 9 of course, the Turnitin program doesn't pick
 10 up.

11 And I think it's sort of been said
 12 already, but just so we're clear. During
 13 the inquiry and investigation, you know,
 14 when I did the yellow highlighting. I don't
 15 know if I mentioned this. What happened, I
 16 found this the evening of December 30 and
 17 started going through this. And what I did
 18 is, actually, I called Dean Dodge and he
 19 said to contact Dean Williams; this is the
 20 proper procedure.

21 And it was getting towards
 22 midnight -- that's why, as you correctly
 23 mentioned, you received my email on the
 24 31st. It was like probably 1:00 in the
 25 morning or something. But to give you an

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1 Professor Gould -Direct Examination
 2 idea, I wanted to get this out. So I
 3 highlighted a few examples very quickly and
 4 sent an email, something like, I haven't
 5 checked this against a plagiarism program or
 6 anything, and it didn't -- so one thing I
 7 wanted to mention, in the yellow
 8 highlighting, and I think the pink also,
 9 there's some of this that included not only
 10 the exact word-for-word, but also some close
 11 paraphrasing.

12 I like the way that we're looking
 13 at this because it's clear and it's most
 14 conservative because it's literally only
 15 word-for-word. I even found some things
 16 that are -- I don't know if it's four or
 17 five words in a row or something, it doesn't
 18 pick up. So I just wanted to clarify that.

19 There's the hungry eyes. When I
 20 saw that -- I don't know if I even put that
 21 in the law review phrase -- that sort of
 22 struck me. Okay. And there's a lot more
 23 but -- if I'm going too fast or jumping
 24 ahead. But let's go to page 11.

25 Did we show the hungry eyes?

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1 Professor Gould -Direct Examination
 2 Q Yeah, we just showed the hungry
 3 eyes.

4 A In the notes?

5 Q Yeah, I did both places.

6 A Yeah. I'm losing track of them.

7 Q That's okay. So -- I'm sorry, page
 8 11 --

9 A In Ms. Tshudy's, which would be
 10 probably 13 -- out of 28.

11 Q This one?

12 A Yeah.

13 Q Okay.

14 A And what you're starting to see,
 15 if you have the document in front of you,
 16 there's heavy highlighting by the Turnitin
 17 program all through here. But just, without
 18 going through all of it, and some of it is
 19 quotations, but in the middle paragraph. In
 20 addition, a couple of things about this
 21 paragraph. First of all, this is literally
 22 a whole paragraph, word-for-word. It's not
 23 a case summary or quotation.

24 It's analytical in nature and
 25 original with Ms. Rogers and then certain

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1 Professor Gould -Direct Examination
 2 words like -- in the -- near the end,
 3 manufacturers and producers -- of the three
 4 lines from the bottom of that paragraph,
 5 producers of lucrative goods would hesitate
 6 to turn to the courts for a remedy if the
 7 court would simply dispose of trade secrets
 8 to the first person who asks -- that's okay.
 9 I mean, little colloquial, but my point is
 10 these are some of the signatures that I was
 11 able to identify in both.

12 Oh, and go to the note, please.

13 Q It's this paragraph.

14 A Yeah, there it is. Word-for-word
 15 with the conservative Turnitin program.

16 Next I would go to page 12 of
 17 Ms. Tshudy's paper and around the middle --
 18 so you're in the right paragraph. Just the
 19 next set of high value. Yes, there.

20 So in the set of highlighting
 21 that's sort of in the middle of the screen.

22 Q This part right here?

23 A Yeah. Thanks.

24 If public disclosure via the
 25 common law right of public access -- and

11 (Pages 38 to 41)

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1 Professor Gould -Direct Examination
 2 then I'm just going to read the literal
 3 work, the word-for-word wording. Causes
 4 generic manufacturer to lose its competitive
 5 advantage as well as the millions of dollars
 6 invested in development of the secret. The
 7 presumption, which favored disclosure, has
 8 demonstrated Momenta -- and, you know, some
 9 paraphrasing, changing the words -- offer a
 10 competitive advantage to generic companies
 11 who develop them.

12 So somewhat unique wording. But I
 13 also mentioned about structure. Here we're
 14 in the common law, right of public access
 15 aspect of the structure. And also it shows
 16 the -- it's also analytical in nature, not
 17 just a quote or something from a case. And
 18 then it also shows the importance of the
 19 Momenta case in both the -- Ms. Roger's note
 20 and Ms. Tshudy's paper.

21 Q So if I go here --

22 A Then you have to find it.

23 I didn't give my specific
 24 selections ahead of the time to Dean
 25 Williams. Sorry.

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1 Professor Gould -Direct Examination

2 A Yeah.

3 Q It's the same concept presented.

4 A And some close paraphrasing that
 5 the Turnitin program doesn't pick up. Okay.
 6 Only a few more that I've highlighted -- I
 7 wonder if I should jump to the conclusion,
 8 but -- let's go to -- let's jump a little
 9 bit.

10 I definitely will get to the
 11 conclusion, but --

12 Q Okay. Go ahead. No, no. Go
 13 ahead.

14 A Should I give them some more
 15 examples of the fingerprint?

16 Q I believe.

17 A Yeah, just a couple more of those
 18 and then the conclusion, I think is valuable
 19 for everyone to see.

20 Page 18 of Ms. Tshudy's paper.

21 Q All right, let me find that.

22 The wider social consequences --
 23 is that where you are? Is that the first
 24 word at the top of the page?

25 A Oh, yes.

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1 Professor Gould -Direct Examination

2 Q It's okay.

3 Yeah, it's this part here.

4 If a public disclosure, being a
 5 common law right of public access, causes --
 6 go ahead.

7 A Yeah. Causes the generic
 8 manufacturer to lose competitive advantage,
 9 as well as the millions of dollars invested
 10 in development of the secret, the resumption
 11 would favor disclosure, as demonstrated in
 12 Momenta.

13 And notice the change, I think
 14 frequently -- a lot in Ms. Tshudy's paper,
 15 she changed "bioequivalency test" to take
 16 out the word bioequivalency, and it said
 17 things like testing method or test method.
 18 The Momenta case was all about
 19 bioequivalency testing -- just so you have
 20 context -- to offer a competitive advantage.
 21 So it shows the emphasis on the Momenta case
 22 and another analytical passage.

23 Q So let's just go back to this.

24 A Oh, thank you.

25 Q So it's the same language.

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1 Professor Gould -Direct Examination

2 Q Okay.

3 A You can almost talk about that.

4 But what I was going to focus on is sort of
 5 in the middle. Go down a little more there.

6 Oh, they have a chilling effect.

7 And so manufacturers disclose trade
 8 secrets -- and then -- have a chilling
 9 effect. I mean, people use that phrase, but
 10 it sort of stuck out -- on beneficial,
 11 effective research. And then phrase like
 12 wider social impact would weigh in favor of
 13 suppressing the subpoena.

14 Q So can you read that whole
 15 sentence.

16 A In Ms. Tshudy's paper, in
 17 addition, requiring biotech manufacturers to
 18 disclose trade secrets would not only have a
 19 chilling effect on beneficial scientific
 20 research and disincentivizing the
 21 investment, but could also have a much wider
 22 social impact that would weigh in favor of
 23 suppressing the subpoena.

24 So, again, there are changes
 25 within these, but I'm sort of focusing on

12 (Pages 42 to 45)

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1 Professor Gould -Direct Examination
2 the -- wider social impact and the chilling
3 effect.

4 Q Okay. And is that a quote from
5 another case, or is that a conclusion drawn?
6 That's a conclusion drawn, right?

7 So let's look at the Law Review.

8 A Yeah. I think it's analytical. I
9 definitely don't recall that from a case.
10 There's a lot of cases in this area, but I
11 took that to be analytical by Ms. Rogers but
12 if someone's aware -- somewhere in the case,
13 let me know.

14 Q So read this sentence, starting,
15 In addition.

16 A Yes. From the note, In addition,
17 the consideration of wider social impact
18 would weigh -- I guess it's -- in favor of
19 suppressing a subpoena, because requiring
20 generic drug manufacturers to disclose trade
21 secrets could have a chilling effect on
22 beneficial scientific research. So some
23 paraphrasing and changes, but signature
24 words.

25 Q And that is a conclusion.

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1 Professor Gould -Direct Examination

2 A It's analytical and a conclusion
3 and not something I recognize any of the
4 cases, but I don't have them all memorized.

5 Q Okay.

6 A And then just one more before we
7 get to the conclusion itself.

8 On page 19 of Ms. Tshudy's paper,
9 I want to focus on that. Keep it right
10 there, the highlighted phrase. It's up
11 close to the top, where it says, constitutes
12 a trade secret. The threat of disclosure by
13 the FDA is manageable. I just want to focus
14 on the word "manageable." Not an unusual
15 word, but it's an important conclusion, very
16 important conclusion. And not only my view,
17 not only Ms. Tshudy's paper, but if you turn
18 to the note, you'll see Ms. Rogers also uses
19 the word "manageable" as a conclusion.

20 And this would be -- it's getting
21 a little probably late. Do you want to --

22 Q Can you tell me where to look for
23 this? Oh, right, here it is. This
24 information, so long as a generic
25 manufacturer treats the bioequivalency test

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1 Professor Gould -Direct Examination
2 as a trade secret, the threat of disclosure
3 by the FDA is manageable.

4 A Yeah, and I know it's only a sort
5 of a short phrase, but manageable is very
6 important as a conclusion. One of the
7 underlying conclusions of Ms. Tshudy's paper
8 and Ms. Roger's note.

9 And then that leads to the
10 conclusion, I think. We'll go to Ms.
11 Tshudy's conclusion and starts on page 19.

12 A couple of things about the
13 conclusion, a good deal of that is
14 word-for-word, even though there's also
15 close paraphrasing within there -- and I'm
16 going to come back this, but just go down
17 for a second to the rest of the conclusion
18 just so people can see the highlighting.
19 And, you know, in analyzing this further.
20 Obviously, I did more analysis beyond what I
21 saw that night -- but on the conclusion,
22 it's significant in my view that a lot of
23 the conclusion is word-for-word.

24 And just go back to the previous
25 page.

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1 Professor Gould -Direct Examination

2 There's a very key conclusion
3 here. You can almost sum this up as a key
4 conclusion on both Ms. Tshudy's paper and
5 Ms. Rogers' notes. You see the phrase, A
6 viable alternative to patent protection.
7 It's the penultimate line there. I mean,
8 that's a major conclusion for both the paper
9 and the note because, again, the strategy
10 here, keying off the Momenta case in both
11 papers, is -- the strategy is to rely on
12 trade secret rather than patents.

13 And then the second part of both
14 papers is to look at risks, potential risks.
15 And so that's a big conclusion, to go
16 through several areas of potential risk and
17 then to come up with the conclusion that
18 it's okay. In other words, it's a viable --
19 they're both talking about trade secret
20 protection over patents being a viable
21 alternative patent protection. And so
22 that's only seven words, but that really
23 struck me because that's a very important
24 inclusion in the same words.

25 And then if you go down still --

13 (Pages 46 to 49)

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1 Professor Gould -Direct Examination
2 yeah, again, a lot of similarity. There's
3 even a bit that the Turnitin program did not
4 pick up, but that's okay. And look at --
5 because you're going through the different
6 possible risks. And the third risk there is
7 largely word by word, as you can see.

8 And then what I want to point to
9 is, again, the final conclusion, A viable
10 and -- Ms. Tshudy put in the word
11 "unstable" -- but you see again, Viable
12 alternative to patent protection. So, one
13 thing, just having looked at that, this is
14 what I mean when I say that a major theme in
15 Ms. Tshudy's paper is focusing on the
16 Momenta case to advocate for a strategy of
17 relying on trade secret protection over
18 patent protection and then looking at the
19 various risks to ultimately conclude that
20 it's okay. In other words, it's a viable
21 alternative to patent protection. The high
22 level of matching or tracking from
23 Ms. Tshudy's theme here and the fundamental
24 thesis of Ms. Roger's note in the Georgia
25 Law Review.

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1 Professor Gould -Direct Examination
2 "viable" was obviously in there because the
3 program found it.

4 UNKNOWN SPEAKER: I did find it,
5 if you would like.

6 DEAN WILLIAMS: Yes. Can you tell
7 me where it is?

8 UNKNOWN SPEAKER: It's on page
9 244, in the first paragraph under the
10 conclusion, about a third of the way
11 through that paragraph, the sentence
12 starts --

13 DEAN WILLIAMS: Oh, right here.

14 UNKNOWN SPEAKER: -- this note has
15 demonstrated.

16 DEAN WILLIAMS: Thank you. Right
17 here, This note has demonstrated --
18 anyway --

19 This note has demonstrated that
20 trade keepers law can provide a viable
21 alternative to patent protection for
22 generic manufacturers.

23 PROFESSOR GOULD: Yeah, that's
24 interesting, so it looks like the
25 program picked it up in one paper, but

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1 Professor Gould -Direct Examination

2 Q Okay.

3 A If you want to go through other
4 parts -- oh, we should find it. Sorry.

5 Q Just look at it here.

6 A That's the notes. There's the
7 sentence about, Third generic manufacturers,
8 right. There's the hungry eyes, again,
9 although that phrase is not in Ms. Tshudy's
10 conclusion. And maybe you go up to find the
11 word "viable alternative." You might go up
12 a little bit in the note -- exactly where
13 that was.

14 Q I don't know what happens if I try
15 to do a control f.

16 A That's one way.

17 Q No, I don't think it's going to
18 take it. Maybe it will.

19 A Another way to do it is to go back
20 to your pink highlighting.

21 Q I'm not sure. Let me look. I
22 have it on page 244.

23 A Well, at the very end of the note,
24 it talks about an alternative to patent
25 objection for manufacturers. But the word

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1 Professor Gould -Direct Examination
2 not in the other. There it is. Thank
3 you.

4 BY DEAN WILLIAMS:

5 Q Professor Gould, do you have
6 anything else to add?

7 A I would just go over the
8 timetable, give you a picture of the run of
9 the semester. As I mentioned, the policy
10 document with the detailed instruction was
11 posted in Canvas in early August before the
12 first day of classes and, again, in Canvas
13 and remained there unrevised. And then the
14 students chose -- each student chose his or
15 her own topic, and Ms. Tshudy selected this
16 topic for herself.

17 I thought it's a good topic, by
18 the way. The discussions I have with
19 Ms. Tshudy focused more on trade secrets,
20 protecting manufacturing processes,
21 especially the processes on how you make or
22 how you prepare these biomolecules, the
23 actual biologic or monoclonal antibody or
24 biopharmaceutical -- that recollection of a
25 lot of our discussions, that's why --

14 (Pages 50 to 53)

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1 Professor Gould -Direct Examination
2 another thing, it was interesting to me that
3 the shift in focus to testing.

4 We had phone conferences, I do
5 that with all the students. We have phone
6 conferences, and I invite them to have as
7 many as they want, really. Ms. Tshudy and I
8 had phone conferences on October 15th and
9 another one on November 5th -- and also,
10 Ms. Tshudy presented her paper briefly, like
11 all the students in class last week of
12 classes -- and then again, the telephone
13 conferences, October 15th, November 5th.
14 And I was clear that she could contact me if
15 she wanted additional phone calls or any
16 concerns.

17 And from November 5th all the way
18 through her sending in the paper on
19 December 17th, MS. Tshudy never contacted me
20 again to have a phone call, nor did she
21 express any concerns. And then I got the
22 paper on December 17th.

23 Q I'm sorry. Say that again. You
24 got the paper when?

25 A December 17th.

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1 Professor Gould -Direct Examination
2 time and effort working on this, it's sort
3 of nice for them to, sort of, present it,
4 especially to people beyond me. And I don't
5 remember, certainly, any focus on the
6 Momenta case. I don't remember any mention
7 of it. I remember a lot of focus on
8 litigation and the risks, possible risks and
9 litigation, that kind of thing. The second
10 part of Ms. Tshudy's paper is what I
11 remember.

12 DEAN WILLIAMS: Professor Butler,
13 I have no more questions at this time,
14 although I may have further questions
15 after Ms. Tshudy and the hearing board
16 question Professor Gould.

17 PROFESSOR BUTLER: All right.
18 Let's turn next to Ms. Tshudy and ask if
19 she has any questions for us.

20 MS. TSHUDY: And this is the only
21 time that I was able to ask him
22 questions; is that correct?

23 DEAN WILLIAMS: Yes, I believe so.
24 I think that's the way the hearing is
25 constructed.

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1 Professor Gould -Direct Examination

2 Q And when was it due?

3 A It was due the 15th.

4 Q Okay.

5 A Ms. Tshudy -- I didn't get any
6 notification, but when it arrived -- I sent
7 a reminder, it arrived via email late on the
8 17th with some explanations and comments on
9 some trouble she had. I'll leave it to
10 Ms. Tshudy because it's personal in nature,
11 so I'll leave that to her.

12 Q In her class presentation, did she
13 focus on the Momenta case during her class
14 presentation?

15 A No. And I'm pretty sure she
16 didn't even mention it. A lot of her
17 presentation in class, I remember, was
18 focused on the second part of her paper and
19 Ms. Roger's paper, the risks of the strategy
20 in terms of things like Freedom of
21 Information Act requests, a member of her
22 presentation in class -- these are just
23 brief five to ten minutes presentations.

24 My view is the students, after
25 having worked on all this and spent so much

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1 PROFESSOR GOULD - CROSS-EXAMINATION

2 PROFESSOR BUTLER: That's right.

3 MS. TSHUDY: Okay.

4 PROFESSOR BUTLER: Do you have
5 some questions?

6 MS. TSHUDY: Yeah.

7 PROFESSOR GOULD: Okay.

8 CROSS-EXAMINATION

9 BY MS. TSHUDY:

10 Q On our meeting on October 15th, do
11 you remember the corrections or critiques
12 that you gave for my paper -- or for, like,
13 my outline?

14 A Mean, honestly, that far back, I
15 don't remember a lot of detail. I seem to
16 remember discussions of trade secrets and
17 manufacturing processes, because that's
18 where I see a lot of the discussion about.
19 What I usually do with students on these
20 calls is try to give some advice. Often
21 students start having so many findings, so
22 many issues and so many things to discuss.
23 So I try and give some guidance when
24 students have to make decisions because it's
25 only a 20-page paper. I've had that

15 (Pages 54 to 57)

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1 PROFESSOR GOULD - CROSS-EXAMINATION
2 discussion really with every student, but I
3 don't remember that much about the October
4 call.

5 Q Did Dean Williams share with you
6 what I presented to her about that
7 October 16 call at all? Did she talk to you
8 about that?

9 A I think I did see an email, and I
10 saw some comments that I disagreed with.
11 There was something alleging that I
12 commandeered your topic, or something about
13 that.

14 If you want to pull up --

15 Q If you like, I actually have
16 copies of those documents.

17 Okay. Let me hand those out to
18 everybody.

19 A There's a lot of different topics
20 covered here, but --

21 DEAN WILLIAMS: Is there a
22 question that you have, Ms. Tshudy?

23 MS. TSHUDY: No. I was just
24 hoping, like -- obviously I want his,
25 you know, testimony to align, so I

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1 PROFESSOR GOULD - CROSS-EXAMINATION
2 didn't know if he remembered really,
3 like, what we discussed. Because
4 obviously, like, I put it -- so when I
5 did have -- I don't want to testify
6 right now. But when I did have that
7 meeting, I was able to, like, he could
8 see my adjustments, make my notations of
9 exactly what he was advising me directly
10 on my paper. And he mentioned it and
11 stuff. And so some of what is on my
12 outline is actually directly what he
13 recommended and specified.

14 So that was it. I was just trying
15 to see if he remembered any of that
16 because it was kind of somewhat
17 memorable.

18 PROFESSOR GOULD: I didn't see any
19 of those annotations, you know, during
20 the course of the semester.

21 I would say a couple of things,
22 one, was -- concerned that Ms. Tshudy,
23 sort of, wondered here whether my
24 concern was that she had written up for
25 one of her class assignments -- being

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1 PROFESSOR GOULD - CROSS-EXAMINATION
2 remote, Ms. Tshudy would write a brief
3 reflection. And she was concerned
4 that -- one of her reflection notes
5 discussed a couple of cases that she
6 discussed in her paper and she expressed
7 some concern that it was my concern,
8 that she was, sort of, double using
9 that. And that was not my concern at
10 all.

11 And then -- I'm not going to go
12 through this whole thing, but some
13 things that I disagreed with, some
14 strong language that Professor Gould
15 really commandeered my topic selection
16 into one that I had no idea was written
17 about so extensively and
18 comprehensively. I don't remember that,
19 and I think that's incorrect.

20 And will I also note, again, that
21 we talked about this on November 5th in
22 a teleconference and I know I made
23 clear, as I do with all my students,
24 that they can contact me to have other
25 calls. And again, from November 5th all

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1 PROFESSOR GOULD - CROSS-EXAMINATION
2 the way until when the sheet the paper
3 in on December 17, I never heard back
4 from her to ask for another phone call,
5 nor did I hear her express any concerns
6 about her project again, despite making
7 clear that I was available.

8 That's all I'll say for now
9 without going into more detail.

10 BY MS. TSHUDY:

11 Q Just to specify, you're saying
12 that at the bottom of page 4 --

13 A Page which?

14 Q The bottom of page 4.

15 A Of your paper?

16 Q Oh, of the package she just
17 handed -- I just figured it made it easier
18 just to put it right on there.

19 A Bottom of page 4.

20 Q Where it says --

21 A It's not numbered, but go ahead.

22 Q Well, at the bottom it says --
23 yeah, sorry, I counted.

24 It says Section 3, trade secret
25 law and the potential threats of disclosure.

16 (Pages 58 to 61)